

Keith E. Russell
Presiding Judge
Maricopa County Justice Courts
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IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)	Supreme Court
)	No. R-18-0021
PETITION TO ADOPT RULES OF)	
SMALL CLAIMS PROCEDURE)	
AND MODIFY RULE 101(b),)	Comment from
JUSTICE COURT RULES OF)	Maricopa County Justice Courts
CIVIL PROCEDURE)	
_____)	

This comment is submitted to the Committee on Improving Small Claims Case Processing on behalf of the Maricopa County Bench. The Bench appreciates the desire to improve and speed up the current Small Claims process and applauds the efforts the Committee has invested in this endeavor. Unfortunately, while the current Pilot Programs appears to be working well in the Rural Counties of Arizona this is not the case for the largest County in Arizona. We believe that with additional testing of a more streamlined process the goals of the Committee can be met while holding down the cost to the litigants and the courts. We ask for the opportunity to prove this position and that additional time be taken to consider the current pilot program and/or alternatives.

The Previous Committee Meeting Revealed Concerns

In Maricopa County, the large volume of cases handled by the Pilot Program has revealed numerous areas of concern. These concerns will increase the cost to the litigants and to the courts. Maricopa County has been involved

with the Pilot Program but that Pilot has demonstrated areas of concern and therefore is asking for an opportunity to test a modified version of the proposed Rules which we believe will be less costly for both litigants and the courts.

At the last Committee meeting case numbers for each individual court in Arizona were presented and labeled FY18. During this period of time there were a total of 16,849 cases filed state-wide, with 3,819 of those cases in Pima County and 10,358 of those cases in Maricopa County. This shows 61% of all of the cases filed were located in Maricopa County and 84% of all of the cases filed were located in Maricopa and Pima County combined. (Pima County has asked for an exemption from implementing the proposed rules.)

While the targeted time frames have been met by the two Maricopa County Justice Courts involved with the Pilot Program, both courts have expressed concerns that the proposed Rule changes are not sustainable long term. A presentation on these concerns was provided at the last Committee meeting. Additionally, at the Committee's last meeting all of the public comments expressed concern for the increased cost being absorbed by the litigants. The courts, because of the nature of government, will have an opportunity to pass increased cost on to the taxpayers, but the litigant's only recourse will be to either bear the increased cost or abandon the use of the small claims process—increasing the use of the more expensive (and difficult to navigate for self-represented litigants) civil process.

The fact that the current Pilot Programs work well in rural Counties which comprise 16% of all of the state wide cases is not a good indicator that the

current Pilot Program will work in the two largest Counties that manage 84% of all of the state wide cases.

The Pilot Program Unreasonably Increases Costs

The largest increase in cost for both the litigants and the courts is the requirement to hold a hearing when no need for a hearing has been demonstrated or requested by either side in the litigation.

The typical small claim case in Maricopa County is filed by a business entity seeking entry of a judgment on a debt. There were 10,447 small claim cases filed in Maricopa County in the past 12 months, 7,566 case or 72% were filed by business entities with 36% of all cases being filed by 10 business entities. These businesses generally process their cases in a professional and efficient manner. The vast majority of these cases are concluded without the need for a hearing. There were 3,692 cases dismissed for a lack of service and hearings were set for 1,655 cases or 16% of the total cases where service was perfected. While modifications to the current Rules certainly could increase the number of hearing held, there is no empirical evidence that an increase in the number of hearings held by a factor of three times the current number of hearings being held is warranted. ¹

¹ A total of 10,447 total cases filed less 3,692 cases dismissed for a lack of service = 6,755. If 1,655 hearing were held this show 1 out of every 4 cases had a hearing or 25%. Under the new proposed Rules every case where service is perfected will have a hearing or 100%. Therefore 3 times as many hearing will be required to be held than have historically been held.

The current proposed Rules will require that all cases have a hearing with no exceptions except to a lack of service. While the court costs to hold three times as many hearings will be material, the courts will do what the Rules require and over time it is likely any additional court cost will be passed on to the litigants. Unfortunately, the cost to litigants to prepare for and attend three times as many hearings may ultimately force some litigants to abandon the small claims venue.

We do not have current numbers from Pima County but the Justice Courts there presented a letter to the committee dated 3/16/18 and provide statistics from FY 2017 which are similar to the numbers shown above for Maricopa County. Their 2017 numbers show a total of 3,460 small claim cases being filed and only 396 hearing being held or 11% of the total filed.

Please Slow Down and Consider Alternatives

There have been a number of recent comments presented to the Committee detailing various modifications to the current proposed Rules. We recognize value in a number of these proposals. We ask for the opportunity to test some of these modifications so the value of them may be measured.

The current Pilot Program has brought to light many unintended consequences and the value of pilot programs in general have clearly been demonstrated. The true value of what has recently been proposed can only be measured by allowing for test courts to implement these modifications and then measure the results against historical information. Please allow us to make this investment on the public's behalf so that the small claims process in the State of

Arizona is as robust as possible with as little cost to all of the parties involved as possible.

Specifically, we request that a working group be put together of committee members and representatives from the two largest counties to examine the proposed modifications which have been presented as written comments to the proposed Rules (already submitted to the committee). That a plan be approved which would allow for the Maricopa County Justice Courts (and any others which would like to participate) to Pilot these proposals in an effort to meet the mandate of this committee “to identify any changes that may serve to reduce the time and expense to litigants in small claims cases.”

Thank you for your consideration.

RESPECTFULLY SUBMITTED this 19th day of October, 2018.

/s/Keith E. Russell

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